

Re: V2 criteria for EA

From: "Keenan, Michael" <michael.keenan@tc.gc.ca>
To: "Thomas, Jody" <jody.thomas@pco-bcp.gc.ca>
Cc: "Hutchinson, Jeffery" <jeffery.hutchinson@pco-bcp.gc.ca>, "Stewart, Rob" <rob.stewart@ps-sp.gc.ca>, "Bogden, Jacqueline" <jacqueline.bogden@pco-bcp.gc.ca>, rob.stewart@canada.ca, [irrelevant] s.38 "Ossowski, John (Ext)" <john.ossowski@cbsa-asfc.gc.ca>, "Brenda Lucki (brenda.lucki@rcmp-grc.gc.ca)" <brenda.lucki@rcmp-grc.gc.ca>, "Daigle, Francois (Ext)" <francois.daigle@justice.gc.ca>, paul.thompson@tpsgc-pwgsc.gc.ca, bill.matthews@forces.gc.ca, "MacDonald, Mike" <mike.macdonald@pco-bcp.gc.ca>, s.38 @pco-bcp.gc.ca, "Brosseau, Kevin" <kevin.brosseau@tc.gc.ca>, "Thangaraj, Arun" <arun.thangaraj@tc.gc.ca>
Date: Mon, 21 Feb 2022 17:27:06 +0000

A few thoughts as follows:

First, I agree with Rob. There is a much higher bar here of necessity, not utility, and Jeff's reframing is heading in the right direction.

I think the 8 criteria listed are really indicators, and there is room to consolidate these indicators to a smaller number as per below.

I think there is one criteria that needs to be assessed on a continuous daily basis. Whether the assessed threat of violence upon Canadian citizens property and institutions is continues to be so high that it is necessary to continue the EA orders.

In other words are the threats assessed as exceeding the ability of law enforcement agencies to adequately counter using all legal authorities and resources available in the absence of the EA orders.

This criteria needs to be applied in a legal, operation and policy sense. In so doing, secondary criteria: are we confident that the power are on balance effective. That is, doEd the benefit of the incremental authorities outweigh the costs in terms of mobilizing extremists, and enabling them to garner public support. EG right now the existence of the EA orders is being used by the global extremist networks to manufacture outrage and fund raise against the GOC. At some point this effect may neutralize the benefits of the economic measures. The same for protestors and vehicles — there is some evidence the existence of the EA is motivating them and adding energy.

So the daily test is:

- 1) necessity
- AND
- 2) clear net benefit

I would suggest the current criteria be framed as indicators informing these two criteria.

Suggest we consolidate 1 and 2 into an indicator of the assessed capability and intent of the blockaders and their vehicles staged in the Arnprior and Embrum to re-occupy Ottawa this coming weekend

Similarly consolidate 3 and 6 into capability and intent of various groups to muster effective blockades of key trade/transportation infrastructure this weekend coming in BC, prairies, Ontario etc.

Would add an indicator of the assessed capability of law enforcement to effectively counter these threats with the knowledge, authorities and strategies now available to them in the absence of the EA orders. (IE police know better than to allow blockades to settle in — sor there is more via-ability today without EAS than before EA).

Hope this helps.

Michael Keenan
Deputy Minister - Sous-ministre
Transport Canada - Transports Canada
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(pronoun: he/him - pronom d'usage : il)

On Feb 21, 2022, at 11:39 AM, Thomas, Jody <Jody.Thomas@pco-bcp.gc.ca> wrote:

Yes it is. How is that judged and by whom is the question ?

Sent from my iPhone

On Feb 21, 2022, at 11:38 AM, Hutchinson, Jeffery <Jeffery.Hutchinson@pco-bcp.gc.ca> wrote:

Roger that. Have been trying to work on some language to cast the truckers as “capability” – a tool to express intent. So long as malevolent intent exists and has capability, there is threat. So the “utility” argument, I think, is best understood as the ability to disrupt capability.

So the argument becomes:

- Do you have evidence or an assessment of illegal intent on a scale that meets the act?
- If yes, has the capability been disrupted to the point that it is no longer NECESSARY (not useful) to use EA orders to prevent the implementation of that intent, again, on a scale anticipated by the act.

Is this making sense?

From: Thomas, Jody <Jody.Thomas@pco-bcp.gc.ca>
Sent: Monday, February 21, 2022 11:17 AM
To: Stewart, Rob <Rob.Stewart@ps-sp.gc.ca>
Cc: Bogden, Jacqueline <Jacqueline.Bogden@pco-bcp.gc.ca>; rob.stewart@canada.ca;
Irrelevant s.38 Ossowski, John (Ext) <john.ossowski@cbsa-asfc.gc.ca>; Brenda Lucki (brenda.lucki@rcmp-grc.gc.ca) <brenda.lucki@rcmp-grc.gc.ca>; Keenan, Michael (Ext) <michael.keenan@tc.gc.ca>; Daigle, Francois (Ext) <francois.daigle@justice.gc.ca>; Paul.Thompson@tpsgc-pwgsc.gc.ca; bill.matthews@forces.gc.ca; MacDonald, Mike <Mike.MacDonald@pco-bcp.gc.ca>; Hutchinson, Jeffery <Jeffery.Hutchinson@pco-bcp.gc.ca>; s.38 @pco-bcp.gc.ca
Subject: Re: V2 criteria for EA

Thanks yes. Very good point
Sent from my iPhone

On Feb 21, 2022, at 11:01 AM, Stewart, Rob <Rob.Stewart@ps-sp.gc.ca<mailto:Rob.Stewart@ps-sp.gc.ca>> wrote:

My quick comment is that, while these are all worthy considerations, they focus too much on the utility of the Act and not its proportionality. In other words, we need to assess the threat in terms of serious violence, not in terms of whether truckers are hanging around.

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Note: this email account is monitored

From: Thomas, Jody <Jody.Thomas@pco-bcp.gc.ca<mailto:Jody.Thomas@pco-bcp.gc.ca>>
Sent: Monday, February 21, 2022 9:57 AM
To: Bogden, Jacqueline <Jacqueline.Bogden@pco-bcp.gc.ca<mailto:Jacqueline.Bogden@pco-bcp.gc.ca>>; rob.stewart@canada.ca<mailto:rob.stewart@canada.ca>> [Irrelevant] s.38
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Cc: MacDonald, Mike <Mike.MacDonald@pco-bcp.gc.ca<mailto:Mike.MacDonald@pco-bcp.gc.ca>>; Hutchinson, Jeffery <Jeffery.Hutchinson@pco-bcp.gc.ca<mailto:Jeffery.Hutchinson@pco-bcp.gc.ca>>> s.38
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Subject: FW: V2 criteria for EA

Good morning
Jeff has put pen to paper and laid out a strawman on thresholds to revoke the EA for us to consider.
Your comments would be appreciated – this is the heavy lift for the day
j

From: Hutchinson, Jeffery <Jeffery.Hutchinson@pco-bcp.gc.ca<mailto:Jeffery.Hutchinson@pco-bcp.gc.ca>>
Sent: Sunday, February 20, 2022 9:13 PM
To: Bogden, Jacqueline <Jacqueline.Bogden@pco-bcp.gc.ca<mailto:Jacqueline.Bogden@pco-bcp.gc.ca>>; Thomas, Jody <Jody.Thomas@pco-bcp.gc.ca<mailto:Jody.Thomas@pco-bcp.gc.ca>>; s.38 @pco-bcp.gc.ca<mailto:s.38 @pco-bcp.gc.ca>>; MacDonald, Mike
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Subject: V2 criteria for EA

This version adds two more for consideration.

Jody, Jacquie, Mike, David and Craig,
I've taken a crack at setting out criteria the government could use to assess when and to what extent to revoke orders made under the Emergencies Act. Happy to get your feedback or advice.

The EA measures brought into force on February 14 were intended from the outset to be proportionate, geographically specific and time limited. As the protests recently experienced across the country continue to evolve, it is natural and appropriate to ask whether the EA provisions are not only useful, but necessary to address the ongoing threats. The ultimate decision should be informed by a range of considerations, including operational realities. At the same time it must be kept top of mind that while the measures invoked are assessed to be charter-compliant, they are, nevertheless, restrictions on civil liberties that must be used with great care and with deep respect for the fundamental freedoms that form the very foundation of our democracy.

With the foregoing in mind, we set out criteria that are intended to guide decision making that will lead to the timely and just revocation of the Emergencies Act order currently in effect:

1. The most deeply entrenched protestors have not indicated their immediate intentions. Protestors from Ottawa (and possibly from other locations) appear to be re-assembling on private properties at Metcalfe, Embrun and Antrim. There may be other locations. These protestors remain within a distance of Ottawa that would enable them to attempt to re-establish blockades in the downtown area or at other critical infrastructure sites (YOW) relatively quickly. The likelihood of renewed occupations using vehicles also engages the issue of whether the ability to commandeer tow trucks and wreckers remains pertinent.

Criterion #1: an assessment that trucks involved in the blockades are returning to their points of origin and not to a new protest site.

2. It is believed that an unknown number of protestors are currently housed in hotels within the downtown core, which would give them easy and quick access to the secure zone and former protest sites. The creation of the security zone relied, at least in part, on the provisions of the EA order that permit the "securing" and "protection" of certain sites. While the risk of a retrenchment of the protest remains, the security zone is a key tool for the security of Parliament and Ottawa's core.

Criterion #2: an assessment that protestors currently lodging in Ottawa are actively making efforts to return to their homes and not to new protest sites.

3. There continues to be the potential for "pop-up convoys" or "copy cat convoys" of protestors, on a national basis, who would attempt to establish a blockade or occupation at critical infrastructure (most notably border crossings). Social media is being monitored for indications of such convoys. This threat is ambiguous. Border crossings that were targeted over the weekend of February 18 – 20 are now clear of protestors but this is a situation that could change very quickly.

Criterion #3: that border crossings (and other critical infrastructure) be free and clear of protest efforts for a defined period of time (e.g. 24 hours, 48 hours, one week) as an indicator that protests no longer target critical infrastructure

4. The protest "movement" has demonstrated a remarkable ability to raise funds to support the illegal protests and blockades. EA measures focused on seizing funds raised for illegal protests are assessed to have been effective in restricting funding. Continued efforts at fund raising may be indicative, although not conclusive, of an intention to continue efforts at staging illegal

protests. Even assuming that fundraising subsidies, it must be kept in mind that at the revocation of the order, the frozen funds will be released.

Criterion #4: that efforts at funding raising specifically related to the “freedom convoy” abate

5. Over the last 4 weeks, the likelihood of Americans arriving in Canada to support the protest movement appeared possible, or even probable. There were rumours of convoys and there was evidence of American sources of funding. In reality, the number of potential protestors attempting to cross the border was not significant and the number of would-be protestors turned back under the EA were few. That said, foreign influence remains a source of potential instigation to re-invigorate attempts at protests and blockades.

Criterion #5: that the number of persons attempting to enter Canada to support the “freedom convoy” movement remain low or very low

6. As protestors withdraw from key areas such as the Ottawa core, the Ambassador Bridge, Emerson and Courtts, there has been little by way of a clear indication of what comes next.

Criteria 1 – 5 allow for an assessment of intentions based on the observed actions of protestors and potential protestors. The stated intentions of the protestors will also be a key indicator of whether future protests, blockades and occupations are likely to occur, keeping in mind that there may not be a single voice that speaks on behalf of the protestors.

Criterion #6: What are the stated intentions of the protestors, either obtained directly (e.g. through police liaison officers) or through social media monitoring

7. The EA has expanded certain powers, particularly with respect to enforcement powers and the management of bank accounts. As the threat picture changes, the need for these tools will evolve. Most important for consideration could be reduced capacity to maintain a secure zone around Parliament or critical infrastructure, the loss of the ability to compel tow trucks, and the prohibition on assembly for the purpose of unlawful protest.

Criterion #7: Are the enforcement powers that exist outside of the EA sufficient to meet an assessment of reduced threat

8. Once the EA orders are revoked, investigations that have started but have not yet resulted in arrest or charges would be terminated.

Criterion #8: Are there outstanding enforcement actions that are deemed sufficiently important to prolong the application of the EA orders